FILED

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF TEXAS SAN ANTONIO DIVISION

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

RUSSELL D. MARTIN,

Plaintiff

Piaintijj

V.

CITY OF SAN ANTONIO,

Defendant

§S	A11	CA0768	FD
§	NO:		

NOTICE OF REMOVAL

§ § §

To the Honorable Judges of the United States District Court for the Western District of Texas, San Antonio Division:

PLEASE TAKE NOTICE THAT, pursuant to 28 U.S.C. §§1446 and 1331, Defendant City of San Antonio, hereby removes this action from the Bexar County District Court to the United States District Court for the Western District of Texas. The grounds for removal are as follows:

1. Plaintiff commenced this action in the Bexar County 408th Judicial District Court on April 15, 2009, and the Clerk of said court assigned Cause Number 2009-CI-06289 thereto. Plaintiff's Second Amended Petition, filed September 15, 2011 (Paragraph 28) contains allegations wherein Plaintiff specifically claims that "Defendant's actions violate 42 USC Section 1983, that "Defendant violated Plaintiff's minimal due process to which he was entitled under the Fourteenth Amendment of the United States Constitution;" and that Defendants actions "deprived Plaintiff of his constitutionally protected property interest in his employment". This is the first time that Plaintiff has asserted any federal cause of action. In addition to Plaintiff's federal claims, Plaintiff has asserted violations of Texas state law.

2. Pursuant to 28 U.S.C. § 1446(a), attached to this Notice of Removal are copies of all

process and pleadings served upon Defendant in the removed case. (See Exhibit A)

3. This Notice of Removal is timely under 28 U.S.C. § 1446(b) because the removal is filed

within thirty (30) days after Defendant first received a copy of a paper from which it could first

be ascertained that the case is one which is or has become removable.

4. The claims asserted against Defendant are civil actions in which this court has original

jurisdiction under the provisions of 28 U.S.C. § 1331 and 28 U.S.C. § 1441(b). Plaintiff's claims

arise under the laws of the United States. Specifically, Plaintiff alleges causes of action pursuant

to the Fourteenth Amendment to the U.S. Constitution and of 42 U.S.C. § 1983.

5. Venue is proper in this district under 28 U.S.C. §1446(a), because Bexar County, where

the removed action has been pending, is encompassed by the United States District Court for the

Western District of Texas, San Antonio, Division.

6. To the extent Plaintiff is asserting various state law causes of action, Defendant would

show that the United States District Court has jurisdiction over Plaintiff's pendent state law

claims, pursuant to the Court's supplemental jurisdiction because those claims arise out of and

are derived from a common nucleus of operative facts which form the basis of Plaintiff's federal

civil claims.

7. Defendant further submits that it will pay all costs and debts incurred in the removal

proceeding, should the court determine that this action is not removable or is improperly

removed.

8. Pursuant to 28 U.S.C. § 1446(d), Defendant intends to serve written notices of this

removal upon all interested parties and upon the State Court, promptly after filing this Notice of

Removal.

WHEREFORE, the City of San Antonio, Defendant in this action, pursuant to these statutes and in conformance with the requirements set forth in 28 U.S.C.A. §1446, removes this action from the 408th Judicial District Court of Bexar County, Texas to this Court, and for such further relief to which Defendant is justly entitled.

Respectfully Submitted,

CITY OF SAN ANTONIO
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Attorneys for CITY OF SAN ANTONIO

CERTIFICATE OF SERVICE

This is to certify that on the 19th day of September 2011, a true and correct copy of the foregoing instrument has been served upon the below named individuals via Certified Mail, Return Receipt Requested:

Javier N. Maldonado Law Office of Javier N. Maldonado, PC 110 Broadway, Suite 510 San Antonio, Texas 78205

Juan M. Gonzales Gonzales & Otero LLC 110 Broadway, Suite 510 San Antonio, Texas 78205

DEBORAH LYNNE KLEIN